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12:57:02 1 manner during this search?

12:57:06 2 A. I don't think so.

12:57:23 3 Q. How many people were present for the
12:57:24 4 search?

12:57:28 5 A. The two men in front of me and the
12:57:32 6 woman policeman behind me.

12:57:33 7 Q. Was there any curtain or screen that
12:57:37 8 separated the female officer from you at the time
12:57:42 9 that you -- that your person was searched?

12:57:47 10 A. There could have been. And I need to
12:57:49 11 explain that.

12:57:49 12 After this was done and he said, put your
12:57:52 13 clothes back on, and I was getting my clothes back
12:57:55 14 on, the first time I noticed her, she was
12:58:02 15 standing -- like the first time I paid any
12:58:04 16 attention to who else was in the room, she was
12:58:06 17 standing in the doorway.

12:58:08 18 Not in the hall, not in the room, but she
12:58:11 19 was standing like right in the -- right in the
12:58:13 20 doorway, and she was looking at me.

12:58:20 21 If the -- this is -- if the two men that
12:58:26 22 were doing the search -- when I turned to look at
12:58:28 23 the wall, which was on my right, and I did that,

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12:58:31 1 and he told me to get dressed, during this process,
12:58:35 2 you weren't allowed to turn around, so I wasn't
12:58:39 3 allowed to turn around to see if she was standing
12:58:41 4 there behind me during the whole time.

12:58:45 5 But as I'm putting on my clothes, you
12:58:49 6 naturally have to move, so I'm putting on my
12:58:52 7 clothes, and when I looked to the left, the first
12:58:54 8 time I glanced to the left -- my left, I seen her
12:58:58 9 in the doorway.

12:59:00 10 If she went outside, I don't know. If she
12:59:03 11 stood there the whole time, I don't know.

12:59:06 12 Q. Your observations and your vantage
12:59:08 13 point was focused on the wall?

12:59:11 14 A. And the two male officers. That
12:59:13 15 whole -- that side of the room.

12:59:14 16 Q. During the portion of your -- of the
12:59:16 17 search of your person?

12:59:17 18 A. Yeah. She could have walked out of the
12:59:27 19 room during the strip search and then came back in
12:59:30 20 after they said, okay, we're done, because the
12:59:32 21 vocal of okay, we're done, would have been easily
12:59:37 22 heard. She was six feet away, if she was outside
12:59:39 23 the room at all.

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12:59:40 1 Q. Did you incur any expenses as a result
12:59:42 2 of your arrest on January 1st, 2017?

12:59:44 3 A. Well, I had to pay Jim.

12:59:45 4 Q. Jim Ostrowski?

12:59:47 5 A. Yeah.

12:59:47 6 Q. How much did you pay Jim?

12:59:49 7 A. \$1500. And had he known it was
12:59:56 8 a felony when we went down there, it probably would
12:59:59 9 have been a whole lot more. We didn't know it was
13:00:01 10 a felony until we got there.

13:00:03 11 Q. Did you pay him 1500 in total, or was
13:00:06 12 that per appearance?

13:00:07 13 A. No. That was all he got.

13:00:09 14 Q. Did Jim send you any receipts or
13:00:11 15 invoices for his legal fee?

13:00:13 16 A. No. No. I've known him 15 years.

13:00:20 17 Q. Did you have any other expenses aside
13:00:23 18 from the fee you paid Jim?

13:00:25 19 A. Well, the hospital sent me a couple
13:00:27 20 bills.

13:00:30 21 And to digress, I think part of my
13:00:35 22 complaint -- when we talked about ECMC earlier,
13:00:38 23 I think part of my complaint was: I'm not paying

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13:00:41 1 any bills. I'm not giving you any money. Collect
13:00:44 2 this from the police department because -- quit
13:00:47 3 sending these bills to me because --

13:00:50 4 Q. Do you still have those bills you
13:00:52 5 received from ECMC?

13:00:53 6 A. If I -- I gave them to the lawyers.

13:00:56 7 Q. When you say lawyers, you mean --

13:00:58 8 A. Yeah. Rupp's got them. Or --

13:01:00 9 Q. Rupp, Baase.

13:01:02 10 A. -- Jim's got them or Rupp's got them.

13:01:04 11 Somebody.

13:01:05 12 Q. Did you ever actually pay any medical
13:01:07 13 bills that you received from ECMC?

13:01:08 14 A. And I never will for that day.

13:01:10 15 Q. Did you incur any medical expenses for
13:01:13 16 any other medical treatment as a result of the
13:01:15 17 incident on January 1st, 2017?

13:01:17 18 A. Not that I've paid. I don't have any
13:01:19 19 money to pay medical bills.

13:01:21 20 Q. Well, have you gotten bills or invoices
13:01:23 21 related to any other medical treatment in
13:01:25 22 connection with this incident?

13:01:30 23 A. I want to truthfully answer, I don't

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13:01:34 1 know. I don't know.

13:01:34 2 Q. Have you ever filled out what's called
13:01:36 3 an application for no-fault benefits?

13:01:44 4 A. I can't remember if I've ever done that
13:01:49 5 or not.

13:01:49 6 Q. Is there any reason why you would have
13:01:52 7 not filled out an application for no-fault benefits?

13:01:54 8 A. I don't know what that is.

13:01:55 9 Q. Okay. That's fair.

13:02:01 10 Have you ever been involved in a motor
13:02:04 11 vehicle accident prior to January 1st, 2017?

13:02:06 12 A. As the driver?

13:02:07 13 Q. Have you been involved in a motor
13:02:09 14 vehicle accident at all prior to January 1st, 2017?

13:02:13 15 A. Not as -- not as a driver. I was
13:02:16 16 a passenger in a car when I was 18 that went off
13:02:25 17 Old Colerain Road. Gus Winters was driving the
13:02:28 18 car. Went over the embankment in an Opel. I was
13:02:33 19 the only one come out of that without a scratch.

13:02:36 20 I was in a car that went off the road in
13:02:41 21 Indiana. I don't remember who the guy was that was
13:02:43 22 driving that vehicle. But I came out of that one
13:02:48 23 without a scratch.

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13:02:54 1 And Rachel and me and the three kids were
13:02:56 2 stopped at an intersection, probably around 2015,
13:03:00 3 and an automobile went out of control and stopped
13:03:03 4 right in front of her car, put a hole in her
13:03:08 5 bumper -- she was driving a Windstar then -- about
13:03:10 6 as big as a quarter. There were no injuries to
13:03:13 7 anybody.

13:03:14 8 So the answer is: I can remember three
13:03:16 9 times I've been in a car wreck in my life, and
13:03:20 10 I never got hurt.

13:03:22 11 Q. Have you ever been involved in any
13:03:23 12 other type of accident that may have caused
13:03:25 13 physical injury to you?

13:03:33 14 A. No.

13:03:33 15 Q. Did you play any sports growing up?

13:03:39 16 A. No.

13:03:39 17 Q. Have you ever suffered a concussion?

13:03:53 18 A. I was on a Huffy Rail bicycle when
13:03:56 19 I was about 11. The front tire went into a storm
13:04:00 20 drain, and the bike flipped, and I was out until
13:04:04 21 I woke up in the hospital. I think I might have
13:04:08 22 been concussed when I was 11.

13:04:17 23 Playing poker when I was about 17 years old,

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13:04:20 1 I got hit in the head with a two-by-four by a kid
13:04:23 2 by the name of Billy Leibish. Lost consciousness
13:04:26 3 for about a half hour.

13:04:28 4 Q. When was that?

13:04:28 5 A. I was about 17 years old, 18 years old.

13:04:39 6 Went to the hospital. They sent me home. My mom
13:04:42 7 came and got me, I think. They sent me home.

13:04:45 8 Other than that, not in the last 40 years.

13:04:47 9 Q. Have you ever suffered any injuries
13:04:49 10 when you were doing any of your construction or
13:04:50 11 laborer work?

13:04:56 12 A. No.

13:04:56 13 Q. Are you aware of any testimony that you
13:04:58 14 have given aside from your 50-h in June of 2017?

13:05:02 15 A. No.

13:05:10 16 Q. Aside from that 50-h in June of 2017,
13:05:14 17 have you given any other statements about this
13:05:15 18 incident to any other City of Buffalo employee?

13:05:20 19 A. I don't think so.

13:05:25 20 Q. How long did the pain to the back of
13:05:27 21 your head last?

13:05:32 22 A. Oh, I digress to the last question.

13:05:36 23 Could you repeat the last question?

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13:05:37 1 Q. The one about statements to City of
13:05:40 2 Buffalo employees?

13:05:40 3 A. Yeah, city employees. I caused to be
13:05:43 4 mailed to Internal Affairs a complaint.

13:05:45 5 Q. What do you mean by you caused to be
13:05:46 6 mailed a complaint to Internal Affairs?

13:05:50 7 A. I took a copy of the complaint in
13:05:56 8 federal court, I put a cover letter on that copy,
13:06:00 9 and I sent it to Internal Affairs.

13:06:01 10 And I said I didn't think there was much
13:06:04 11 more that needed to be said, other than what was
13:06:07 12 contained within the complaint that they could --
13:06:10 13 all they had to do was look at the complaint and
13:06:12 14 they could figure out what my Internal Affairs
13:06:14 15 complaint about the police officer's conduct would
13:06:19 16 be.

13:06:19 17 And all I wanted to know was when they
13:06:24 18 started their investigation. I'd like you to tell
13:06:26 19 me when you start your investigation. And I mailed
13:06:28 20 it, so I caused the post office to deliver it.

13:06:30 21 Q. Understood. When did you mail that?

13:06:32 22 A. I can't remember that.

13:06:34 23 Q. Do you recall what year?

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13:06:38 1 A. It was last year.
13:06:39 2 Q. So at some point in 2019?
13:06:41 3 A. Or '18. '18 or '19. Long years.
13:06:48 4 Q. Do you have any record showing that you
13:06:49 5 mailed it?
13:06:50 6 A. I'm pretty sure somewhere in my house
13:06:54 7 or in the office or somewhere there's a receipt
13:06:58 8 with a ZIP code deliverable. I know I mailed it
13:07:06 9 from the post office downtown here behind City
13:07:10 10 Hall, so there would be a tracking number on there.
13:07:13 11 Whether you could still find it on the --
13:07:17 12 but I think they've since acknowledged they have
13:07:20 13 it, but they didn't acknowledge they had ever
13:07:23 14 started an investigation.
13:07:24 15 Q. Why do you think that they acknowledged
13:07:26 16 they had it?
13:07:30 17 A. Fairly recently I was told that
13:07:41 18 Internal Affairs had communicated with my attorney.
13:07:46 19 Q. Who told you that?
13:07:48 20 Well, let me preface this by saying I'm not
13:07:52 21 inquiring about conversation you had with your
13:07:53 22 attorney.
13:07:53 23 A. I gotcha.

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13:07:55 1 Q. So if that is that --

13:07:55 2 A. I understand.

13:07:56 3 Q. -- I'm not trying to ask that.

13:07:57 4 A. I understand.

13:07:58 5 Q. But did anybody from the police

13:08:00 6 department or Internal Affairs contact you with

13:08:02 7 regard to your letter?

13:08:03 8 A. Never.

13:08:06 9 Q. And, again, I'm not trying to breach
13:08:08 10 that, but I just want to get a handle on this.

13:08:11 11 Is it at some point you were informed someone from
13:08:14 12 Internal Affairs has contacted your attorneys?

13:08:17 13 A. Yeah.

13:08:17 14 Q. Do you know when you were informed of
13:08:19 15 that?

13:08:24 16 A. I'm going to say within the last six
13:08:26 17 weeks. After the WIVB broadcast. And I don't know
13:08:34 18 what day that was on either.

13:08:48 19 Q. Did you have a primary care physician
13:08:49 20 on January 1st, 2017?

13:08:53 21 A. No. The first -- no, I'm not sure
13:08:57 22 I did. But when I went on like the 10th to see
13:09:00 23 a doctor, that was -- they called her my primary,

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13:09:06 1 and I had never seen the woman before. She's
13:09:09 2 a young girl. And I never saw her after that
13:09:12 3 either. That was at 1500 Broadway.

13:09:15 4 Q. Did you have a doctor, prior to this
13:09:19 5 incident, that you had most recently seen?

13:09:27 6 A. I can't remember. I think I was going
13:09:31 7 to 1500 Broadway before I went back to 1500 Broadway
13:09:35 8 on like the 10th of January of '17, but I think my
13:09:39 9 primary had left, and I had to get a new primary.
13:09:44 10 I think I had been attending that clinic.

13:09:47 11 Q. Prior, so at some point in the year of
13:09:50 12 2016, you had attended --

13:09:52 13 A. Yeah.

13:09:52 14 Q. -- or received treatment at that --

13:09:55 15 A. I think so, yeah.

13:09:56 16 Q. The same clinic located at
13:09:57 17 1500 Broadway?

13:09:59 18 A. Yeah. It was at Broadway and Bailey
13:10:02 19 for a while. It was St. Vincent's. And then they
13:10:06 20 opened at 1500.

13:10:11 21 Q. How long did the pain to your head
13:10:13 22 last?

13:10:18 23 A. From when the police car crashed into

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13:10:20 1 me on January 1st, 2017, is that what you're asking
13:10:25 2 me?

13:10:25 3 Q. How long did you experience pain to the
13:10:26 4 back of your head as a result of this incident?

13:10:33 5 A. It took about three days for me to
13:10:37 6 just -- to not feel like bad. It took about three
13:10:43 7 days for my head to stop, you know.

13:10:46 8 Q. Do you have any scars or marks to any
13:10:50 9 parts of your body as a result of the incident on
13:10:52 10 March -- not March -- January 1st, 2017?

13:10:56 11 A. I have little like dots on my wrists
13:10:58 12 where the scabs were, like scarring, but that's --
13:11:03 13 you know, every scar's got a tale, so on a guy,
13:11:08 14 a scar doesn't mean a whole lot.

13:11:10 15 Q. So is it fair to say you may have had
13:11:12 16 scars on your wrists prior to January 1st, 2017?

13:11:15 17 A. Not where these scars are.

13:11:22 18 Q. Can you point out the scars that you're
13:11:25 19 referring to?

13:11:26 20 So the record should reflect you held out
13:11:28 21 your right hand?

13:11:29 22 A. Yeah.

13:11:29 23 Q. Your right wrist.

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13:11:30 1 A. You see that? Like you're going to
13:11:33 2 think it's a line, but that's right where that --
13:11:35 3 that's right where that handcuff was.

13:11:39 4 And there's little -- you see the white
13:11:43 5 right there? You can -- you can just see it.
13:11:47 6 That's a scar. That's a scar from where that
13:11:50 7 handcuff bit into me.

13:11:52 8 Q. So the record should reflect that
13:11:53 9 you've just pointed to the top of your right wrist?

13:11:55 10 A. Yeah. There's a scar about a half inch
13:11:58 11 long, and it's a little white -- a little whiter,
13:12:01 12 in deep, than it is on either side. It's a very
13:12:04 13 small scar.

13:12:07 14 Q. Before I stopped you, you were
13:12:09 15 beginning to hold out your left hand.

13:12:12 16 A. Yes. And the same thing over here.
13:12:16 17 But that one's right there. That one's right here.

13:12:19 18 Q. So the record should reflect that
13:12:21 19 you've pointed to the top portion of your wrist,
13:12:28 20 towards -- almost towards the inside of your arm;
13:12:31 21 is that fair?

13:12:32 22 MR. DAVENPORT: Yes.

13:12:35 23 THE WITNESS: And they're tiny.

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13:12:37 1 BY MS. HUGGINS:

13:12:38 2 Q. Have you put anything -- an ointment or
13:12:40 3 anything on your wrists to try to reduce any
13:12:43 4 scarring?

13:12:46 5 A. No.

13:12:55 6 Q. How long did the bruising to your
13:12:57 7 wrists last?

13:13:07 8 A. It took a good three months before
13:13:11 9 my -- my wrists started to have the resemblance
13:13:17 10 that they have now. It took about three months.

13:13:19 11 Q. You had bruising for a period of three
13:13:21 12 months?

13:13:21 13 A. I had swelling. I had swelling on both
13:13:25 14 sides of this -- this crack where the scar was
13:13:28 15 where I showed you, I had swelling on both sides of
13:13:31 16 that for months.

13:13:32 17 Q. How long did you experience bruising to
13:13:33 18 your wrists?

13:13:39 19 A. Discoloration? When you say bruising,
13:13:41 20 I think of like black and blue or red. When you
13:13:43 21 say swelling -- you can have swelling without the
13:13:47 22 color changing.

13:13:47 23 Q. So you've just described that you had

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13:13:49 1 swelling for approximately three months.

13:13:51 2 A. Yeah.

13:13:51 3 Q. How long did you experience bruising to
13:13:54 4 your wrists?

13:13:56 5 A. Ten days at most before the color came
13:14:01 6 back.

13:14:14 7 Q. What was the first medical treatment,
13:14:15 8 if any, did you receive after the January 1st, 2017
13:14:20 9 incident?

13:14:20 10 A. When I went to 1500. It took me that
13:14:26 11 many days to get in.

13:14:27 12 Q. Approximately ten days later?

13:14:29 13 A. Yeah. It might have been a week. But
13:14:31 14 it took that long to get in. We called them right
13:14:33 15 away, but they said, you can't see the doctor, and
13:14:35 16 you've got to have a new primary because your old
13:14:38 17 primary left, and it will be -- okay. Give me the
13:14:41 18 first available.

13:14:43 19 Q. What was the name of that doctor you
13:14:45 20 saw?

13:14:52 21 A. I think her name is in the 50-h.

13:14:54 22 Q. Is that that younger female doctor --

13:14:56 23 A. Yeah.

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13:14:56 1 Q. -- you've referred to earlier?

13:14:58 2 A. Yeah. Yeah.

13:14:59 3 Q. And you mentioned you never returned
13:15:01 4 or saw --

13:15:01 5 A. I never saw her after that, yeah.

13:15:04 6 I only saw her one time, I think.

13:15:06 7 Q. What medical treatment was provided for
13:15:08 8 you when you saw the doctor at 1500 Broadway?

13:15:14 9 A. She said, if it hurts, put ice on it.

13:15:17 10 She said, you can take over-the-counter painkillers
13:15:27 11 for it.

13:15:29 12 And she said -- I said, can you give me
13:15:32 13 a referral to a neurologist? Because I could see
13:15:34 14 that was where this was going, because I could feel
13:15:37 15 that they don't feel the same.

13:15:41 16 And I don't remember if she gave me
13:15:43 17 a neurologist's referral or not, but I know
13:15:49 18 I attempted to make an appointment with Dent
13:15:52 19 Neurology down on Harlem Road.

13:15:55 20 Q. Do you know if any diagnostic testing,
13:15:57 21 an MRI, an x-ray, a CAT scan, any of that was
13:16:02 22 performed when you sought treatment at 1500 Broadway?

13:16:04 23 A. Not that I remember.

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13:16:06 1 Q. Do you know if you received any diagnosis
13:16:08 2 of any kind when you attended 1500 Broadway?

13:16:10 3 A. Not that I remember.

13:16:13 4 Q. When did you attempt to make an
13:16:15 5 appointment at Dent?

13:16:23 6 A. I think I had one for February, the
13:16:27 7 next month.

13:16:29 8 Q. In the year 2017?

13:16:31 9 A. Yeah.

13:16:31 10 Q. Did you receive any medical treatment
13:16:33 11 from Dent?

13:16:34 12 A. No.

13:16:34 13 Q. Why not?

13:16:35 14 A. They wanted \$200 cash to see me, to let
13:16:39 15 me walk in the door. And I asked them: Well, are
13:16:41 16 you going to be able to do anything for me if I give
13:16:44 17 you \$200? And they said, well, we'll set you up
13:16:47 18 with a neurologist and you'll have to come back
13:16:50 19 again.

13:16:51 20 That's going to be the initial patient
13:16:52 21 intake. No, you're probably not going to get any
13:16:56 22 care that day. And they asked what was wrong, and
13:16:58 23 I told them.

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13:16:58 1 Q. Was that conversation over the phone or
13:17:00 2 in person?

13:17:00 3 A. Over the phone. And they asked what
13:17:03 4 was wrong, and I told them, and they said, well,
13:17:05 5 this is probably going to be an insurance claim, so
13:17:07 6 you're definitely going to have to pay cash if you
13:17:09 7 don't have any insurance of your own.

13:17:11 8 Q. What did you identify to Dent as your
13:17:13 9 complaints?

13:17:13 10 A. I told them I had a handcuff injury.

13:17:26 11 Q. Did you seek any other medical
13:17:30 12 treatment with regard to the January 1, 2017
13:17:35 13 incident, aside from what we've just discussed at
13:17:38 14 1500 Broadway and your attempted appointment at
13:17:40 15 Dent?

13:17:45 16 A. Catholic Health has a Family Medical
13:17:48 17 Practice. I can't remember the name of the street
13:17:55 18 that it's on, but it's a few blocks down from OLV.
13:18:03 19 See, I don't drive, so I don't know the name of
13:18:05 20 streets. But that became my primary physician.

13:18:14 21 Over the course of care with my primary
13:18:16 22 physician for whatever ails a 57-year-old man,
13:18:21 23 I think I may have mentioned my arms, but I don't

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13:18:24 1 think that was his primary concern of my care.

13:18:28 2 Q. Did you describe the injuries you claim
13:18:30 3 from the January 1st, 2017 incident to any medical
13:18:36 4 providers, aside from the doctor at 1500 Broadway
13:18:40 5 and the intake person at Dent?

13:18:43 6 A. No.

13:18:44 7 Q. Why not?

13:18:53 8 A. I just put it down to lack of
13:18:54 9 opportunity.

13:18:54 10 Q. What do you mean by that?

13:18:55 11 A. You have to have money to see
13:18:57 12 a neurologist. You have to have money to go into
13:19:00 13 Dent or you've got to have an Obama card or you've
13:19:03 14 got to have some kind of insurance card, and I didn't
13:19:05 15 have any insurance in January of 2017 or February
13:19:08 16 of '17 or March of '17.

13:19:09 17 Q. Were you ever given a diagnosis by
13:19:11 18 any doctor at any point or a referral by a doctor
13:19:15 19 at any point saying that you needed to see
13:19:17 20 a neurologist to address your concerns relating
13:19:20 21 to the January 1st, 2017 incident?

13:19:22 22 A. I suspect that that young girl doctor
13:19:27 23 that I saw at 1500 the second week of January or

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13:19:31 1 the first -- the 10th of January, I think she gave
13:19:35 2 me a referral and that's why I reached out to Dent.

13:19:37 3 Because to get into a normal neurologist
13:19:42 4 without any money or insurance was going to be
13:19:44 5 a problem, but the longer I waited to see
13:19:47 6 a neurologist, the more concerned I was because
13:19:50 7 it was hard to move my thumb.

13:19:56 8 Q. Have you received any medical treatment
13:19:58 9 at all from any neurologist?

13:20:01 10 A. No.

13:20:06 11 Q. Aside from 1500 Broadway and the
13:20:09 12 Catholic medical practice that you've referenced,
13:20:11 13 have you received medical treatment from anyone
13:20:13 14 else in relation to the January 1st, 2017 incident?

13:20:16 15 A. No.

13:20:17 16 Q. And it's your testimony that what has
13:20:21 17 prevented you is cost, not denial of any medical
13:20:25 18 treatment itself?

13:20:34 19 A. That, coupled with one other thing.

13:20:36 20 Q. What has prevented aside from cost?

13:20:40 21 A. That, coupled -- resources are the
13:20:43 22 primary reason, but it's also coupled with the fact
13:20:46 23 that when you call and you say, I want to set up --

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13:20:51 1 I want to see somebody about my wrists, they ask
13:20:54 2 you: Well, okay. Is this a work-related injury?
13:20:56 3 No. Well, was it an injury? Yes. What happened
13:20:59 4 to your wrists? Well, I got hit by a police car,
13:21:04 5 I got arrested, and they put the handcuffs on so
13:21:07 6 tight that they injured me.

13:21:08 7 As soon as you say that, the conversation
13:21:11 8 changes.

13:21:11 9 Q. What do you mean by that?

13:21:19 10 A. Not everybody wants to involve
13:21:22 11 themselves with the state, the police department.
13:21:29 12 Not everybody, not every practitioner wants to jump
13:21:33 13 in.

13:21:36 14 Q. Has any medical provider explicitly
13:21:39 15 refused to evaluate or provide any treatment as
13:21:42 16 a result of your description of how you suffered
13:21:45 17 the injury?

13:21:51 18 A. The young doctor at 1500, ten days
13:21:54 19 after I had the injury, when I spoke to her while
13:22:00 20 she was interviewing me and caring for me and
13:22:04 21 treating me, she said, let me pull up the records
13:22:07 22 from ECMC.

13:22:10 23 So she pulled up the records from ECMC, and

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13:22:13 1 she said to me: What you're telling me doesn't --
13:22:23 2 doesn't match what's in the file here. And I said,
13:22:27 3 what do you mean? And she said, well, it says here
13:22:31 4 you jumped on a police car and that you were arrested
13:22:36 5 for it and you were taken to the CPEP unit.

13:22:39 6 And what you're telling me that you had this
13:22:42 7 injury to your wrists because of the handcuffs, it
13:22:47 8 doesn't -- it doesn't -- it doesn't jive with this.

13:22:50 9 Q. Do you believe that ECMC medical
13:22:51 10 records are inaccurate with regard to the
13:22:54 11 January 1st, 2017 incident?

13:22:55 12 A. I'm not an expert in medical records.
13:22:57 13 I don't know. But I know there is one error that
13:23:00 14 is claimed in the record at ECMC.

13:23:03 15 Q. What error is that?

13:23:05 16 A. There's a description of some type of
13:23:16 17 suicidal inclination about going to a hotel and
13:23:22 18 starving oneself to death or drinking oneself to
13:23:26 19 death. That's at the bottom of a page on the
13:23:29 20 record. And when you go to the next page, on the
13:23:31 21 top, it says, the prior entry was written in error.
13:23:36 22 It was entered in error.

13:23:37 23 So I know there's one error there.

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13:23:42 1 Q. Have you attended any physical therapy
13:23:45 2 as a result of the January 1st, 2017 incident?

13:23:52 3 A. No.

13:23:52 4 Q. Have you sought the services or seen
13:23:55 5 a chiropractor as a result of the January 1st, 2017
13:23:58 6 incident?

13:23:59 7 A. No.

13:24:01 8 Q. Have you taken any pain medication at
13:24:04 9 any point as a result of the January 1st, 2017
13:24:06 10 incident?

13:24:07 11 A. No. I don't take pills of any kind.

13:24:20 12 Q. At any point are you aware of any
13:24:23 13 diagnostic testing done on you, aside from the
13:24:28 14 tests at ECMC that morning and anything you may
13:24:30 15 have received at 1500 Broadway?

13:24:34 16 A. Not that I remember.

13:24:36 17 Q. Have we discussed all medical providers
13:24:39 18 that you have seen after this January 1st, 2017
13:24:44 19 incident?

13:24:44 20 A. I hope so.

13:24:46 21 Q. Me too. That's why I'm asking you.

13:24:48 22 Is there any other doctor or therapist or
13:24:55 23 chiropractor, whatever you want to categorize them,

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13:24:58 1 whom you've sought to try to alleviate or address
13:25:01 2 any injuries you have suffered as a result of the
13:25:04 3 January 1st, 2017 incident?

13:25:05 4 A. No.

13:25:19 5 Q. When was the last time you saw
13:25:21 6 a medical provider with regard to the January 1st,
13:25:24 7 2017 incident?

13:25:38 8 A. I think I pretty well give up trying to
13:25:42 9 get a doctor to fix what ails me on my wrists.

13:25:49 10 At the OLV clinic, when my primary at the
13:25:51 11 OLV clinic out by OLV, when he said to me that:
13:25:56 12 Jimmy, I think there's other things. You're going
13:26:02 13 to have kidney stones. He said, there's other
13:26:05 14 things we've got to worry about with you other than
13:26:08 15 your wrists. And I think, you know, there's more
13:26:11 16 important things that we should pay attention to.
13:26:15 17 Learn to live with something. I said, okay.
13:26:17 18 I think that's kind of when I said, all right.

13:26:18 19 Q. When did you stop receiving medical
13:26:20 20 treatment for either the pain to your head or the
13:26:23 21 issues you've described with your wrists?

13:26:33 22 A. When did I --

13:26:35 23 Q. Stop.

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13:26:36 1 A. Yeah. As soon as I got my new primary
13:26:41 2 at the OLV clinic, Our Lady of Victory, and the
13:26:47 3 doctor told me -- he said, well, we can't cure
13:26:52 4 everything. It's going to take me months to get
13:26:54 5 you in to see a neurologist, and I think you should
13:26:58 6 see a urologist before a neurologist, because I'm
13:27:01 7 57, and --

13:27:01 8 Q. Due to the kidney stones?

13:27:03 9 A. Yeah. I have stage 3 kidney disease.

13:27:10 10 Q. Do you recall when that occurred that
13:27:14 11 you were told this?

13:27:18 12 A. I'm going to say about a year after.

13:27:20 13 So it would have been January, February of 2018.

13:27:28 14 It was kind of like: Well, let's worry about
13:27:33 15 what's happening today.

13:27:35 16 Q. Since that conversation in 2018, have
13:27:40 17 you scheduled or sought any treatment for any
13:27:44 18 issues related to the January 1st, 2017 incident?

13:27:46 19 A. No.

13:27:47 20 Q. Do you have any plans to do so in the
13:27:50 21 future?

13:27:53 22 A. Well, if I had a pile of money, I'd
13:27:56 23 probably call a neurologist and say, give me your

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13:27:59 1 first available, and have him at least look at my
13:28:03 2 wrists so he could hear my complaints to find out
13:28:07 3 if there's anything he can do.

13:28:09 4 Q. Have you taken any steps or --

13:28:11 5 A. No.

13:28:11 6 Q. -- contacted anyone?

13:28:12 7 A. No. That pile of money ain't fell out
13:28:15 8 of the sky.

13:28:23 9 Q. Did the January 1st, 2017 incident
13:28:26 10 cause you to miss any actual time working as
13:28:32 11 a landlord?

13:28:40 12 A. It added time. It made things longer.

13:28:42 13 Q. Were you confined to your home or to
13:28:44 14 a bed for any period of time, as a result of the
13:28:48 15 January 1st, 2017 incident?

13:28:49 16 A. Them first two or three days, I didn't
13:28:51 17 leave the house. And I can tell you, this kind of
13:28:55 18 kills like six birds with one stone. You asked
13:28:59 19 earlier about when we first -- when we first knew
13:29:05 20 that Mike Wolfe had left. After I got home that
13:29:10 21 night, the next day, which would have been January
13:29:14 22 2nd, I went outside, and I walked around, and
13:29:18 23 Mike's door was ajar.

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13:29:20 1 But I didn't want to -- I was still trying
13:29:23 2 to -- my head's still ringing from the day before.
13:29:26 3 I'm like: I'm not even going to talk to Mike.
13:29:30 4 I don't want to deal with that too. Because he
13:29:32 5 always had an issue at some point.

13:29:34 6 So the next day, which would have been the
13:29:36 7 3rd, I did the same thing. I did the walk-around.
13:29:40 8 Didn't do anything. Didn't do any work those two
13:29:43 9 days. But it was the 3rd that I said, the door's
13:29:47 10 been open all night long. The apartment door.

13:29:51 11 Q. To Mike's unit?

13:29:53 12 A. Yeah. I said, the door's been open
13:29:55 13 that same six inches for two days. I can't leave
13:29:59 14 buildings open. So that's when I went up on the
13:30:02 15 porch, on the 3rd, and knocked on the door and
13:30:05 16 said, Mike? Mike? Mike?

13:30:07 17 The apartment's empty. I go in. I got
13:30:11 18 possession of the real estate. So then I changed
13:30:14 19 the lock on the door, because there was nothing of
13:30:17 20 his that belonged in there -- or nothing of his
13:30:20 21 there. He had gone completely.

13:30:23 22 And I had to change the lock on the door
13:30:25 23 because there was a key in the lock that was busted

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13:30:28 1 off. I still got that lock with that broke-off key
13:30:37 2 in there. And the door had been busted down.

13:30:43 3 Q. Have you filled out any applications
13:30:46 4 for any type of benefits with regard to your
13:30:49 5 injuries that you suffered on January 1st, 2017?

13:30:54 6 A. No.

13:30:57 7 Q. Have you filed for any disability
13:31:00 8 benefits?

13:31:02 9 A. No.

13:31:06 10 Q. At the time of this incident on
13:31:11 11 January 1st, 2017, did you have any health
13:31:13 12 insurance?

13:31:13 13 A. No.

13:31:15 14 Q. Since this incident have you obtained
13:31:17 15 any health insurance?

13:31:21 16 A. I think I got Obamacare right now.

13:31:27 17 Whatever that is.

13:31:30 18 Q. Were there any hobbies or activities,
13:31:33 19 aside from what you described, and your landlord
13:31:36 20 duties, that you were prevented from doing as
13:31:38 21 a result of the January 1st, 2017 incident?

13:31:40 22 A. I put on this dress shirt this morning
13:31:42 23 and I couldn't snap that button on my left wrist.

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13:31:47 1 I couldn't -- I couldn't -- I spent 20 minutes
13:31:50 2 trying to get that button snapped, and every time
13:31:53 3 I did it, this side over here hurt.

13:31:56 4 I'm not trying to be loud. I promise.

13:31:59 5 But that is just the kind of the stuff that
13:32:07 6 happens.

13:32:08 7 Q. Difficulty in terms of using -- closing
13:32:10 8 a button or --

13:32:11 9 A. You'll be doing -- you'll be doing the
13:32:14 10 most minute thing. The thing that you don't think
13:32:16 11 it's going to -- you know, I can do this. I've
13:32:19 12 been doing this all my life. And you're like: Ow,
13:32:24 13 ow, ow for 20 minutes and finally go: Rachel, will
13:32:28 14 you button my shirt for me? It's ludicrous.

13:32:31 15 You're painting an apartment because you
13:32:34 16 have to paint the apartment before you can rent it
13:32:36 17 to the next guy, and you're drawing a line, and
13:32:39 18 you've gone eight inches, and your sash tool falls
13:32:45 19 out of your hand. It just falls out of your hand.

13:32:47 20 You're like: Holy shit. Now you've got to
13:32:50 21 get down off the ladder. You've got to wipe the
13:32:53 22 brush off. It takes another 20 minutes.

13:32:55 23 Q. Have you hired anyone to help you do

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13:32:57 1 any household activities as a result of this
13:32:59 2 incident?

13:32:59 3 A. Household activities, no. The
13:33:02 4 biggest -- maybe I answered that too fast. The
13:33:03 5 biggest expense I've had was the roof, because
13:33:07 6 I couldn't trust myself on it. I couldn't use the
13:33:09 7 trowel on Rachel's porch. That was \$1100.

13:33:15 8 I couldn't even put the backing up because
13:33:18 9 I couldn't drive the nails hard enough. I couldn't
13:33:21 10 even put the backing up for the stucco guy. When
13:33:24 11 he got there, he had to take the backing off and
13:33:26 12 redo it because I couldn't get the nails in far
13:33:29 13 enough.

13:33:29 14 Q. In terms of those landlord duties that
13:33:34 15 you've described, the roofing and the stucco, you
13:33:36 16 hired contractors to assist?

13:33:37 17 A. I paid somebody.

13:33:44 18 Q. Do you have any restrictions from any
13:33:46 19 of your doctors with regard to any activities you
13:33:50 20 are allowed to perform?

13:33:51 21 A. No. Not that I'm aware of.

13:33:55 22 Q. Have you ever suffered any prior
13:33:57 23 injuries to either of your wrists or hands?

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13:33:59 1 A. No.

13:34:04 2 Q. Have you taken any vacations since

13:34:06 3 January 1st, 2017?

13:34:19 4 A. No.

13:34:36 5 MS. HUGGINS: Off the record.

13:39:27 6 (A recess was then taken.)

13:39:32 7 BY MS. HUGGINS:

13:39:33 8 Q. Have you sought treatment from any

13:39:35 9 mental health professional or counselor as a result

13:39:38 10 of the January 1st, 2017 incident?

13:39:40 11 A. Not yet.

13:39:41 12 Q. Do you have plans to do so?

13:39:45 13 A. No formal plans. I haven't decided

13:39:47 14 what to do there.

13:39:53 15 Q. What, if any, symptoms or issues have

13:39:57 16 you experienced, in terms of your mental health,

13:40:00 17 that have caused you to consider doing that in the

13:40:03 18 future?

13:40:10 19 A. I still can't believe that people are

13:40:12 20 lying. It just -- I can't fathom lying this

13:40:21 21 consistently for this long in their official

13:40:25 22 capacities.

13:40:26 23 Q. Have you ever received mental health

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13:40:28 1 treatment or counseling prior to January 1st, 2017?

13:40:33 2 A. In what time frame?

13:40:34 3 Q. Your life.

13:40:39 4 A. Not that I remember.

13:40:41 5 Q. Is it possible that you may have
13:40:44 6 received such treatment that --

13:40:44 7 A. Yeah, but I might have forgot.

13:40:45 8 Q. -- you don't remember?

13:40:46 9 A. But I might have forgot.

13:41:18 10 Q. Aside from the complaints that you sent
13:41:22 11 directly to ECMC and your cover letter to the

13:41:26 12 police department Internal Affairs Division, have
13:41:29 13 you written any other complaints or information

13:41:34 14 with regard to this incident to any other

13:41:36 15 individuals?

13:41:37 16 A. There might have been a mention of it
13:41:39 17 on social media after the WIVB report, but I really
13:41:47 18 have stayed away from mentioning this on social
13:41:51 19 media at all.

13:41:53 20 Q. The possible mention of it on social
13:41:55 21 media, would that be a post that you yourself
13:41:58 22 caused?

13:41:58 23 A. Or somebody IM'd me and said, I saw

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13:42:01 1 this on WIVB. What's going on here?

13:42:04 2 Q. So perhaps like a direct conversation
13:42:06 3 that you had with somebody?

13:42:07 4 A. Or somebody posed a question, and
13:42:09 5 I said, well, it's public now, and posted the WIVB
13:42:13 6 story.

13:42:14 7 Q. Did you post that to your own account?

13:42:17 8 A. I probably would have, after getting
13:42:21 9 like three or four people saying, wow. What
13:42:25 10 happened here?

13:42:25 11 Q. What social media accounts do you have?

13:42:27 12 A. Only on Facebook.

13:42:28 13 Q. What is your user name on Facebook?

13:42:30 14 A. There's two. There's Jimmy Kistner and
13:42:34 15 there's James Kistner.

13:42:35 16 Q. Do you spell Jimmy with a Y?

13:42:38 17 A. Yeah.

13:42:42 18 There is Jimmy 4 Fillmore -- Jimmy 4 Fillmore
13:42:53 19 on Facebook. Jimmy 4 Fillmore on Facebook, and
13:43:04 20 then there is a jimmykistner4fillmore.com. There
13:43:14 21 is a dot com that's not on Facebook.

13:43:17 22 And that's it. I don't tweet. I don't do
13:43:21 23 anything like that.

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13:43:22 1 Q. At the time of this incident, you were
13:43:23 2 not attending any school or occupational training,
13:43:29 3 correct?

13:43:30 4 A. No, I was not.

13:43:33 5 Q. Aside from the expenses that you have
13:43:36 6 described previously, did you lose any income as
13:43:40 7 a result of this incident?

13:43:48 8 A. No.

13:43:48 9 Q. Aside from the time you were at
13:43:52 10 McDonald's on Niagara Street, have you had any
13:43:54 11 other interaction with any members of the Buffalo
13:43:58 12 Police Department since this incident?

13:44:01 13 A. About six weeks after the 1st of
13:44:04 14 January, before the 50-h hearing, so it was after
13:44:10 15 January 1st, but before, somebody kicked down the
13:44:13 16 back door of my room in the back of 33.

13:44:18 17 I was over at Rachel's. I don't think I had
13:44:27 18 gone there for about two days, so we didn't know
13:44:29 19 exactly what day it happened, but we called the
13:44:32 20 police.

13:44:33 21 Earl was there on that day when we
13:44:37 22 discovered somebody had kicked down the back door
13:44:39 23 when we weren't there and called the police. There

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13:44:44 1 was one officer that responded. I don't think I'd
13:44:47 2 ever met that man before. Never seen him. And he
13:44:52 3 said he would write a report. And he was there ten
13:44:56 4 minutes and drove away.

13:44:58 5 Q. That interaction with the male officer
13:45:02 6 focused solely on --

13:45:03 7 A. Yeah.

13:45:04 8 Q. -- the back door of --

13:45:04 9 A. Yeah.

13:45:05 10 Q. -- 33 being kicked down?

13:45:07 11 A. Yeah.

13:45:07 12 Q. Okay.

13:45:14 13 A. I don't think I've -- since this we've
13:45:16 14 called them at all.

13:45:17 15 Q. Have you had -- strike that.

13:45:21 16 Have you filed a claim or any other legal
13:45:23 17 proceeding against any other party, outside of the
13:45:25 18 City of Buffalo or Buffalo Police Department,
13:45:27 19 related to the January 1st, 2017 incident?

13:45:29 20 A. No.

13:45:50 21 Q. Have you given any other interviews,
13:45:51 22 aside from the one to WIVB, regarding this
13:45:59 23 incident? Not anything else.

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13:46:01 1 A. Or anything else?
13:46:03 2 Q. Not anything else.
13:46:04 3 A. Not anything else.
13:46:05 4 Q. Just the January 1st incident.
13:46:08 5 A. No.
13:46:10 6 Q. I don't believe I have any further
13:46:12 7 questions for you. Oh, I do.

13:46:16 8 Sir, do you recall receiving any type of
13:46:19 9 testing to your head in -- in June of 2009?

13:46:38 10 A. I don't remember that far back.

13:46:40 11 MS. HUGGINS: Okay. Fair enough.

13:46:42 12 I have no further questions for you.

13:46:43 13 Thank you for your time.

13:46:46 14 MR. DAVENPORT: All set.

13:46:47 15 THE REPORTER: Will Mr. Davenport be
13:46:50 16 supplied?

13:46:50 17 MS. HUGGINS: He will.

18 THE REPORTER: Thank you.

19 (Deposition concluded at 1:46 p.m.)

20

21 * * *

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1 I hereby CERTIFY that I have read the
2 foregoing 160 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on February 6, 2020.

7

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9

JAMES KISTNER

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

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18 *Anne T. Barone*

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ANNE T. BARONE, RPR,
Notary Public.

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JACK W. HUNT & ASSOCIATES, INC.

1120 Liberty Building

Buffalo, New York 14202 - (716) 853-5600